

# EXHIBIT B

**2019-34688 / Court: 190**

CAUSE NO. \_\_\_\_\_

**ANDRES FERRO***Plaintiff,*

v.

**UNITED PROPERTY & CASUALTY  
INSURANCE COMPANY***Defendant.*§  
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§**IN THE DISTRICT COURT OF****HARRIS COUNTY, TEXAS**\_\_\_\_\_**JUDICIAL DISTRICT****PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Plaintiff, ANDRES FERRO, who files this, Plaintiff's Original Petition against Defendant, UNITED PROPERTY & CASUALTY INSURANCE COMPANY, and, for cause of action, would respectfully show this Honorable Court the following:

**I. DISCOVERY CONTROL PLAN**

1. Plaintiff intends for discovery to be conducted under Level 3 of Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE. This case involves a first-party insurance policy dispute concerning damages attributable to Hurricane Harvey. This dispute involves complex legal issues originating from the TEXAS INSURANCE CODE, common law, and recent Texas case law. It will include intricate discovery regarding claims-handling practices, coverage decisions, adjustment/payment of claims, including Plaintiff's claim, as well as and the systematic approach by United Property & Casualty Insurance Company and its adjusters to the handling of catastrophic loss property damage claims arising from Hurricane Harvey. Plaintiff therefore, respectfully asks the Court to order that discovery be conditioned in accordance with a discovery control plan tailored to the particular circumstances of this suit.

## **II. PARTIES**

2. Plaintiff, Andrew Ferro, is a Texas resident who resides in Harris County, Texas.

3. Defendant, United Property & Casualty Insurance Company ("UPC"), is a Foreign Fire and Casualty insurance company which is licensed and authorized to engage in the business of insurance in the State of Texas. UPC may be served with process by serving its registered agent at: CT Corporation System, 1999 Bryan St. Ste. 900, Dallas, TX 75201-3136.

## **III. JURISDICTION & VENUE**

4. This Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court. Pursuant to Rule 47 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff states he seeks monetary relief in excess of \$100,000.00 and less than \$200,000.00. Plaintiff reserves the right to amend his petition during and/or after the discovery process.

5. This Court has personal jurisdiction over UPC because UPC is an insurance company licensed to do business in Texas and Plaintiff's causes of action arise from UPC's business activities in this state.

6. Venue is proper in Harris County because the insured property is located in Harris County and all or a substantial part of the events giving rise to this lawsuit occurred in Harris County. TEX. CIV. PRAC. & REM. CODE § 15.032.

## **IV. FACTS**

7. Plaintiff owns the residential property at 727 Kingsmark Drive in, Houston, Harris County, Texas (the "Property"). UPC sold, and Plaintiff paid for, a Texas homeowners' insurance policy (the "Policy") to protect and insure Plaintiff's dwelling, other structures, personal property, and other items applicable to the Property.

8. From August 25th through September 1, 2017, Hurricane Harvey swept across Texas causing widespread destruction and devastation. Beginning on or about August 26, 2017, Hurricane Harvey's massive wind field caused extensive damage in and around Harris County, and to Plaintiff's Property, specifically

9. Plaintiff's Property suffered extensive wind-related damage during Hurricane Harvey. Hurricane Harvey damaged the entire roof, which in turn allowed water to penetrate into the property interior and cause significant interior water damages.

10. Following Hurricane Harvey, Plaintiff promptly and timely reported his Property claim (the "Claim") with UPC under the Policy and asked UPC to cover the cost of repairs required to return the Property to its pre-loss condition, including, but not limited to, replacement of the roof and repair of the significant interior water damage.

11. Plaintiff is entitled to these benefits under the UPC Policy as it specifically covered Plaintiff's dwelling for wind-related damage, and specifically, hurricane damage. All of the damage to the Property was covered under the express terms of the Policy.

12. UPC assigned at least two adjusters to perform the investigation and initial inspection of the Property on its behalf.

13. UPC's adjusters, however, because of inadequate training or improper instruction, failed to perform a reasonable and adequate investigation of Plaintiff's Claim. In doing so, the adjusters either completely missed or simply ignored damages that were present at the time of the inspections and were clearly attributable to Hurricane Harvey's powerful winds.

14. The inadequacy of the adjusters' investigation and adjustment of Plaintiff's Claim is evidenced by the fact they neither adjusted for, nor included, the full scope of Plaintiff's roof damage. Plaintiff's roof sustained extensive wind damage to its entire surface and to the

underlying structure/framing. Evidence of shingle and flashing damage is readily apparent from even a casual view. The massive amount of roof damage allowed water to penetrate the Property exterior and resulted directly in the substantial interior damage, which damage UPC's adjusters also failed to document properly or sufficiently.

15. Although Plaintiff notified and, later, reminded UPC numerous times of the significant widespread roof damage which caused major leaks throughout the interior of the Property, the adjusters failed to fully and adequately inspect the damaged areas of Plaintiff's property, including the roof, among other items and areas. The adjusters' failure to record the full extent of the wind-damaged Property resulted in an improperly under-scoped and consequently undervalued estimate for repairs that the adjusters submitted to UPC.

16. As an illustration—and certainly not intended as a complete listing of all of the errors and omissions in the adjusters' investigation and adjustment—the following are just some of the unfair and unreasonable low points from their "inspection" and estimates:

- i. The adjusters' estimates either missed or intentionally ignored damages to the roof because it provides no amount to remove and replace damaged shingles, sheathing, pipe jacks, or furnace vents.
- ii. The adjusters' estimates fail to provide any amounts to restore the fire place and/or chimney (e.g., amounts to remove and replace stone, drywall, and mortar) to its pre-loss condition(s).
- iii. The adjusters' estimates under-scoped the amount of damage to cedar ceiling panels
- iv. The adjusters' estimates greatly under-scoped the amount necessary to repair the water-damaged upstairs bedroom and game room to pre-loss conditions because it provides no amounts to remove and replace fixtures and insulation material.

17. Plaintiff contends that, upon information and belief, UPC and their adjusters set out and overtly sought to under-scope, underpay, and ultimately minimize Plaintiff's Claim for

covered damages. At minimum, UPC ratified the adjusters' unreasonable and improper "adjustment" of the Claim, resulting in Plaintiff's Claim effectively being denied in part as well as undervalued and underpaid. Plaintiff has suffered actual damages resulting from UPC's and their adjusters' wrongful acts and omissions as set forth above and further described herein.

## **V. CAUSES OF ACTION**

### **Breach of Contract against UPC**

18. An insurance policy is considered a contract under Texas law. UPC failed to perform its contractual duties to adequately compensate Plaintiff in accordance the terms of the Policy that it wrote and sold to Plaintiff. Specifically, UPC refused to pay the full proceeds of the Policy, although due demand was made for proceeds to be paid in an amount sufficient to cover the damaged property, and all conditions precedent to recovery upon the Policy had been carried out and accomplished by Plaintiff. UPC's conduct constitutes a breach of the insurance contract between UPC and Plaintiff.

### **Non-Compliance by UPC with the Texas Insurance Code, Unfair Settlement Practices**

19. UPC's conduct constitutes multiple violations of the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES, TEX. INS. CODE §541.060(a). All violations under this provision are made actionable by TEX. INS. CODE §541.151.

20. Falsehoods and misrepresentations under Texas law may be communicated by actions as well as spoken word; therefore, deceptive conduct is equivalent to a verbal representation. UPC's misrepresentations by means of deceptive conduct include, but are not limited to: (1) failing to conduct a reasonable inspection and investigation of Plaintiff's damages; (2) stating—by way of the adjusters' estimate—that Plaintiff's damages were less extensive or severe than they actually were, resulting in the undervaluing of Plaintiff's damages; (3) using the

adjusters' own statements and conclusions about the scope and degree of the damage as a pretext for effectively denying covered damages and/or underpaying damages; and (4) failing to provide an adequate explanation for the inadequate payment(s) Plaintiff in fact received.

21. UPC's unfair settlement practice, as described above, of misrepresenting—by words and acts/omissions—to Plaintiff material facts relating to the coverage at issue, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(1).

22. UPC's unfair settlement practice, as described above, of failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the Claim, even though its liability under the Policy was reasonably clear, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(a)(2)(A).

23. UPC failed to explain to Plaintiff the reasons for failing to include all covered damages in its evaluation and/or payments on the Claim. Furthermore, UPC did not communicate that future settlements or payments would be forthcoming to pay for the entire amount of Plaintiff's loss, nor did it provide any explanation for the failure to adequately settle Plaintiff's Claim. UPC's conduct is a violation of the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES. TEX. INS. CODE §541.060(a)(3).

24. Although promptly reported by Plaintiff to UPC, UPC did not properly inspect the Property and failed to account for and/or undervalued many of Plaintiff's damages, both exterior and interior. UPC's unfair settlement practice, as described above, of refusing to pay Plaintiff's full Claim without conducting a reasonable investigation, constitutes an unfair method of competition and an unfair and deceptive act or practice in the business of insurance. TEX. INS. CODE §541.060(7).

**Non-Compliance by UPC with the Texas Insurance Code,  
Prompt Payment of Claims Act**

25. UPC's conduct constitutes multiple violations of the TEXAS INSURANCE CODE, PROMPT PAYMENT OF CLAIMS ACT. All violations made under this provision are made actionable by TEX. INS. CODE §542.060.

26. UPC's failure—and thus continuing delay—to remit full payment of the amounts owed on Plaintiff's Claim following its receipt of all items, statements, and forms reasonably requested and required, as described above, constitutes a non-prompt payment of the Claim. TEX. INS. CODE §542.058.

**Breach of the Duty of Good Faith and Fair Dealing**

27. UPC's conduct constitutes a breach of the common law duty of good faith and fair dealing that a Texas insurer owes to its policy holders on account of the disparity in bargaining power between an insurance company and its individual insureds with respect not only to the drafting of the contract of insurance itself, but also with respect to the handling and payment of insured claims.

28. UPC's failure, as described above, to adequately and reasonably investigate and evaluate Plaintiff's Claim, despite the fact that at the very same time, UPC knew, or should have known by the exercise of reasonable diligence, that its liability was reasonably clear, constitutes a breach of UPC's duty of good faith and fair dealing to Plaintiff, which is both non-delegable and continues to exist until the relationship between the parties is ultimately changed to that of judgement debtor and judgement creditor, respectively.



## **VI. KNOWLEDGE**

29. All of the acts described above, together and singularly, were done “knowingly” as that term is used in the TEXAS INSURANCE CODE and were a producing cause of Plaintiff’s damages described herein.

## **VII. CONDITIONS PRECEDENT**

30. All conditions precedent to Plaintiff’s claims for relief have been performed or have occurred and/or UPC waived the same. This includes, but is not limited to, providing notice pursuant to TEXAS INSURANCE CODE 542A and pre-litigation alternative dispute resolution, if any.

## **VIII. DAMAGES**

31. Plaintiff would show that all the acts as alleged herein, taken together or singularly, constitute the producing cause of the damages sustained by Plaintiff.

32. As previously mentioned, Plaintiff’s covered losses have not been properly addressed or paid, which has prevented Plaintiff from making necessary repairs, thus causing further, consequential damage, to the Property while also causing undue hardship and a burden on Plaintiff. These damages and losses are a direct result of Defendant’s mishandling of Plaintiff’s Claim in violation of the terms of the Policy at issue and of the laws set forth above.

33. For breach of contract, Plaintiff is entitled to regain the benefit of his bargain with respect to his purchase of the Policy, which is the amount of his Claim, together with attorneys’ fees under TEXAS CIVIL PRACTICE & REMEDIES CODE Section 38.001.

34. For noncompliance with the TEXAS INSURANCE CODE, UNFAIR SETTLEMENT PRACTICES, Plaintiff is entitled to actual damages, which include the loss of the benefits that should have been paid pursuant to the Policy, mental anguish, court costs, interest, and attorneys’

fees. For knowing conduct of the acts and conduct described and complained of above, Plaintiff is entitled to, and does hereby, seek recovery of three times his actual damages. TEX. INS. CODE §541.152.

35. For noncompliance with the TEXAS INSURANCE CODE, PROMPT PAYMENT OF CLAIMS ACT, Plaintiff is entitled to interest on the amount of the Claim as damages at the rate determined under TEX. INS. CODE §542.060, together with reasonable and necessary attorneys' fees.

36. For breach of common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from UPC's breach of its Duty, such as additional costs, economic hardship, additional losses resulting from nonpayment of the amount owed, exemplary damages, and damages for emotional distress.

37. For the prosecution and collection of this Claim, Plaintiff has been compelled to engage the services of the attorneys and law firms whose names are subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Texas Supreme Court.

#### **IX. JURY DEMAND**

38. Plaintiff requests that all causes of action alleged herein be tried before a jury consisting of citizens residing in Harris County, Texas. Plaintiff hereby tenders the appropriate jury fee.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon trial hereof, said Plaintiff has and recovers such sums as would reasonably and justly compensate him in

accordance with the rules of law and procedure, as to actual damages, treble damages under the TEXAS INSURANCE CODE, and all punitive and exemplary damages as may be found. In addition, Plaintiff requests the award of attorneys' fees for the trial and any appeal of this cause, for all costs of Court on his behalf expended, for pre-judgment and post-judgment interest as allowed by law, and for all such other and further relief, whether by law or at equity, in which he may show himself to be justly entitled.

Respectfully submitted,

**WILLIAMS HART BOUNDAS EASTERBY, LLP**

By: /s/ Sean H. McCarthy

Sean H. McCarthy  
State Bar No. 24065706  
P. Griffin Bunnell  
State Bar No. 24080815  
8441 Gulf Freeway, Ste 600  
Houston, TX 77017  
Telephone: 713-230-2200  
Fax: 713-643-6226  
Email: smccarthy@whlaw.com  
E-mail: gbunnell@whlaw.com

AND

**THE COOK LAW FIRM, PLLC**

Andrew C. Cook  
State Bar No. 24057481  
8441 Gulf Freeway, Sixth Floor  
Houston, TX 77017  
Telephone: (713) 230-2366  
Facsimile: (713) 643-6226  
Email: acc@texinsurancelaw.com

**ATTORNEYS FOR PLAINTIFF**

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT FOR CLERK USE ONLY:

2019-34688 / Court: 190

Envelope No: 33704370

By: CUERO, NELSON

FILED 6/20/2019 1:17:18 PM

STYLED ANDRES FERRO V UNITED PROPERTY &amp; CASUALTY INSURANCE

(e.g., John Smith v. All American Insurance Co., In re Mary Ann Jones, In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: SEAN H. MCCARTHY Email: smccarthy@whlaw.com Address: 8441 Gulf Erwy Ste 600 City/State/Zip: Houston Texas 77017 Signature: State Bar No: 24065706		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): ANDRES FERRO Defendant(s)/Respondent(s): UNITED PROPERTY & CASUALTY INSURANCE COMPANY (Attach additional pages as necessary to list all parties)		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: Additional Parties in Child Support Case: <input type="checkbox"/> Custodial Parent: <input type="checkbox"/> Non-Custodial Parent: <input type="checkbox"/> Presumed Father:										
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>														
<b>Civil</b> <b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: <b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: <b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax			<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:			<b>Real Property</b> <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Property <input type="checkbox"/> Other Property: <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Null <input type="checkbox"/> Non-Discharge <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Pre-indictment <input type="checkbox"/> Other:			<b>Family Law</b> <b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce: <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:			<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIESA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparents Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:		
<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Arbitration/Union Competition <input type="checkbox"/> Code Relations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetrate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			<b>Probate &amp; Mental Health</b> <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:											
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>														
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receivership <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover										
<b>4. Indicate damages sought (do not select if it is a family law case):</b> <input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input checked="" type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000														



**Marilyn Burgess**  
**2019-34688 Court: 190**  
 HARRIS COUNTY DISTRICT CLERK

201 Caroline | P.O. Box 4651 | Houston, Texas 77210-4651 | 832-977-5800 | www.hcdistrictclerk.com

### Request for Issuance of Service

CASE NUMBER: \_\_\_\_\_ CURRENT COURT: \_\_\_\_\_

Name(s) of Documents to be served: PLAINTIFF'S ORIGINAL PETITION

FILE DATE: \_\_\_\_\_ Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

Issue Service to: UNITED PROPERTY & CASUALTY INSURANCE COMPANY

Address of Service: 1999 Bryan Street Suite 900

City, State & Zip: Dallas Texas 75201

Agent (if applicable) CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the proper Box)

- |                                                                |                                                       |                                                  |                                                     |
|----------------------------------------------------------------|-------------------------------------------------------|--------------------------------------------------|-----------------------------------------------------|
| <input checked="" type="checkbox"/> Citation                   | <input type="checkbox"/> Citation by Posting          | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citations Rule 106 Service |
| <input type="checkbox"/> Citation Scire Facias                 |                                                       | <input type="checkbox"/> Newspaper               |                                                     |
| <input type="checkbox"/> Temporary Restraining Order           | <input type="checkbox"/> Precept                      | <input type="checkbox"/> Notice                  |                                                     |
| <input type="checkbox"/> Protective Order                      |                                                       |                                                  |                                                     |
| <input type="checkbox"/> Secretary of State Citation (\$12.00) | <input type="checkbox"/> Capias (not an E-Issuance)   | <input type="checkbox"/> Attachment              |                                                     |
| <input type="checkbox"/> Certiorari                            | <input type="checkbox"/> Highway Commission (\$12.00) |                                                  |                                                     |
| <input type="checkbox"/> Commissioner of Insurance (\$12.00)   | <input type="checkbox"/> Hague Convention (\$16.00)   | <input type="checkbox"/> Garnishment             |                                                     |
| <input type="checkbox"/> Habeas Corpus                         | <input type="checkbox"/> Injunction                   | <input type="checkbox"/> Sequestration           |                                                     |
| <input type="checkbox"/> Subpoena                              |                                                       |                                                  |                                                     |
| <input type="checkbox"/> Other (Please Describe) _____         |                                                       |                                                  |                                                     |

(See additional Forms for Post-Judgment Service)

#### SERVICE BY (check one):

- |                                                                                                                                                                                           |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <input type="checkbox"/> ATTORNEY PICK-UP (phone) _____                                                                                                                                   | <input type="checkbox"/> E-Issuance by District Clerk<br>(No Service Copy Fees Charged) |
| <input checked="" type="checkbox"/> MAIL to attorney at: <u>ADDRESS BELOW</u>                                                                                                             |                                                                                         |
| <input type="checkbox"/> CONSTABLE                                                                                                                                                        |                                                                                         |
| <input type="checkbox"/> CERTIFIED MAIL by District Clerk                                                                                                                                 |                                                                                         |
| <p><i>Note: The email registered with EFileTx.us.gov must be used to retrieve the E-Issuance Service Documents.<br/>         Visit www.hcdistrictclerk.com for more instructions.</i></p> |                                                                                         |
| <input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____                                                                                                       | Phone: _____                                                                            |
| <input type="checkbox"/> OTHER, explain _____                                                                                                                                             |                                                                                         |

Issuance of Service Requested By: Attorney/Party Name: Sean H. McCarthy Bar # or ID 24065706

Mailing Address: 8441 Gulf Frwy Ste 600 Hou TX 77017

Phone Number: 713-230-2200

**RETURN OF SERVICE**

Notice: This document contains sensitive data

Court	District Court 190th Judicial District of Harris County, Texas	
Plaintiff	ANDRES FERRO	Cause # <b>201934688</b>
Defendant(s)	UNITED PROPERTY & CASUALTY INSURANCE COMPANY	Came to Hand Date/Time <b>6/05/2019 6:36 AM</b>
Manner of Service	Personal	Service Date/Time <b>6/05/2019 11:57 AM</b>
Documents	CITATION; PLAINTIFF'S ORIGINAL PETITION	Service Fee:  <b>\$77.50</b>

I am certified under order of the Judicial Branch Certification Commission to serve process, including citations in Texas. I am not a party to or interested in the outcome of this lawsuit. My information: identification number, birth date, address, and certification expiration date appear below. I received and delivered the Specified Documents to Defendant as stated herein.

On **6/05/2019 at 11:57 AM**: I served **CITATION and PLAINTIFF'S ORIGINAL PETITION** upon **UNITED PROPERTY & CASUALTY INSURANCE COMPANY c/o CT CORPORATION SYSTEM, REGISTERED AGENT** by delivering 1 true and correct copy(ies) thereof, with **UNITED PROPERTY & CASUALTY INSURANCE COMPANY c/o CT CORPORATION SYSTEM, REGISTERED AGENT**, Who accepted service, with identity confirmed by subject stating their name, **Michelle Torres**, a black-haired Hispanic female approx. 25-35 years of age, 5'8"-5'10" tall and weighing 120-140 lbs at **1999 BRYAN STREET SUITE 900, DALLAS, TX 75201**.

My name is: **John David Whitehead**. My date of birth is: **11/10/1966**

My address is: **2293 Hawes Ave #217Z, Dallas, TX 75235, USA**.

My process server identification # is: **PSC-12227**. My Certification expires: **8/31/2019**.

I declare under penalty of perjury that the foregoing, **RETURN OF SERVICE**, is true and correct.

Executed in **DALLAS** county, TX.

**June 05, 2019**

  
John David Whitehead

\_\_\_\_\_  
Date Executed





**CAUSE NO: 2019-34688**

**ANDRES FERRO** § **IN THE DISTRICT COURT OF**  
§  
**VS.** § **HARRIS COUNTY, TEXAS**  
§  
**UNITED PROPERTY & CASUALTY** §  
**INSURANCE COMPANY** § **190<sup>TH</sup> JUDICIAL DISTRICT**

**DEFENDANT, UNITED PROPERTY & CASUALTY INSURANCE COMPANY'S**  
**ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION AND**  
**REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, United Property & Casualty Insurance Company ("United Property,") in the above-entitled and numbered cause and files this, its Answer to Plaintiff's Original Petition and would respectfully show unto the Court the following:

United Property & Casualty Insurance Company asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and requests that Plaintiff be required to prove his charges and allegations against United Property & Casualty Insurance Company by a preponderance of the evidence as is required by the Constitution and law of the State of Texas.

**II.**

**DEFENSES**

1. United Property & Casualty Insurance Company denies that the required conditions precedent were performed and/or occurred.
2. The damages allegedly sustained by Plaintiff may have been the result of actions or omissions of individuals over whom United Property had no control, including but not limited to Plaintiff, therefore, United Property is not liable to Plaintiff.

3. United Property issued a policy of insurance to Andres Ferro, bearing Policy no. 431000381507-01, and United Property adopts its terms, conditions and exclusions as if copied *in extenso*.

4. The Policy does not cover loss caused directly or indirectly by “flood, surface water...”

5. The Policy does not cover wear and tear, marring, deterioration, mechanical breakdown, latent defect, inherent vice or any quality in property that causes it to damage or destroy itself.

6. The Policy does not cover loss caused by faulty, inadequate or defective design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction; materials used in repair, construction, renovation or remodeling; or maintenance; of part or all of any property whether on or off the "residence premises".

7. The Policy does not cover damages which occurred prior to policy inception.

8. United Property is entitled to any credits or set-offs for prior payments by United Property or other third parties.

9. To the extent that Plaintiff's damages are determined to be the result of a failure by Plaintiff to take reasonable steps to mitigate the loss, those damages are not recoverable.

10. Plaintiff's extra-contractual claims alleging bad faith fail because a *bona fide* controversy existed and continues to exist concerning Plaintiff's entitlement, if any, to insurance benefits.

11. To the extent that all statutory and policy requisites have not been satisfied, this suit is premature.



12. Plaintiff's extra-contractual claims alleging bad faith fail because a finding of the existence of coverage for Plaintiff's underlying insurance claim is necessary to establish any basis for Plaintiff's extra-contractual, Insurance Code claims. Because Plaintiff's allegations are generally based on Defendant's alleged failure to investigate the claim and pay policy benefits, the existence of any applicable exclusions precludes Plaintiff's extra-contractual Insurance Code claims.

### III.

#### **REQUEST FOR DISCLOSURE**

Pursuant to Rule 194, Plaintiff is requested to disclose the information or material described in Rule 194.

### IV.

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, Defendant, United Property & Casualty Insurance Company, respectfully prays that Plaintiff take nothing by his suit, that Defendant recovers costs, and for such other and further relief, both at law and in equity, to which United Property & Casualty Insurance Company may be justly entitled.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Sarah R. Smith

Sarah R. Smith  
Texas State Bar No. 24056346  
24 Greenway Plaza, Suite 1400  
Houston, Texas 77046  
Telephone: 713.659.6767  
Facsimile: 713.759.6830  
[sarah.smith@lewisbrisbois.com](mailto:sarah.smith@lewisbrisbois.com)

ATTORNEYS FOR DEFENDANT,  
UNITED PROPERTY & CASUALTY  
INSURANCE COMPANY

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above pleading has been forwarded pursuant to the Texas Rules of Civil Procedure on this 1<sup>st</sup> day of July, 2019.

Sean H. McCarthy  
P. Griffin Bunnell  
Williams Hart Boundas Easterby, LLP  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
[smccarthy@whlaw.com](mailto:smccarthy@whlaw.com)  
[gbunnell@whlaw.com](mailto:gbunnell@whlaw.com)  
*Attorneys for Plaintiff*

***Via Eserve***

Andrew C. Cook  
The Cook Law Firm, PLLC  
8441 Gulf Freeway, Sixth Floor  
Houston, Texas 77017  
[acc@texinsurancelaw.com](mailto:acc@texinsurancelaw.com)  
*Attorney for Plaintiff*

***Via Eserve***

/s/ Sarah R. Smith  
Sarah R. Smith

**HC**Districtclerk.comFERRO, ANDRES vs. UNITED PROPERTY &  
CASUALTY INSURANCE COMPANY

7/5/2019

Cause: 201934688 CDI: 7 Court: 190

**DOCUMENTS**

Number	Document	Post Jdgm	Date	Pgs
85985973	Defendant, United Property & Casualty Insurance Company's Original Answer		07/01/2019	4
85594273	Return of Service		06/05/2019	1
85330480	Plaintiffs Original Petition		05/20/2019	10
-> 85330481	Civil Case Information Sheet		05/20/2019	1
-> 85330482	Civil Process Request Form		05/20/2019	1